

**DYLAN J. TREVINO, a minor, suing  
by his next friend and guardian,  
DIANA TREVINO, and DIANA  
TREVINO, Individually,**

**v.**

## Defendants.

## JURY DEMANDED

Defendants have until November 7, 2011 to answer or move to dismiss. [ECF No. 70] The Case Management Order in this case calls for disclosure of the identity of fact witnesses and all information specified in Rule 26(a)(1)(A) by the close of business today, October 28, 2011. [ECF No. 29] On October 26 and 27, the New Defendants conferred with Plaintiffs' counsel regarding the relief sought in this Motion. Plaintiffs did not consent.

The New Defendants seek an additional amount of time on three bases: (i) the New Defendants object to the jurisdiction of this Court and should not be compelled to enter discovery in this action until the Court has rendered a decision as to whether jurisdiction has been properly asserted;<sup>1</sup> (ii) the New Defendants were made party to this action only recently and have not had sufficient time to gather information necessary to comply with the Case Management Order; and (iii) Plaintiffs would suffer no prejudice as the result of an enlargement of time for the New Defendants, nor would the currently agreed trial date be delayed.

First, the New Defendants should not be compelled to act as parties to this action because this Court lacks personal jurisdiction over them as will be shown in the New Defendants' motions to dismiss — motions that have yet to be filed pursuant to the agreed stipulation between the parties. The New Defendants' motions to dismiss will be fully briefed by December, leaving the parties ample time to complete discovery pursuant to the Case Management Order should the Court deny these motions. This reason, independently, constitutes good cause for an additional amount of time.

Second, the New Defendants are not yet in a position to identify fact witnesses and provide all information specified in Federal Rule 26(a)(1)(A). Plaintiffs Dylan and Diana Trevino and Defendant Blitz U.S.A., Inc., the parties to the original Complaint filed December

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<sup>1</sup> The New Defendants file this Motion without prejudice to their claims or defenses, including, without limitation, any defense based on lack of personal jurisdiction.

20, 2010, agreed at the scheduling conference in March 2011 to give each other nearly seven months in order to collect this information. The New Defendants, on the other hand, have had less than seven weeks from the time that they were served with the Amended Complaint. It is inequitable to put such an onerous obligation on the New Defendants when the original parties have had abundant time to respond.

Third, Plaintiffs would suffer no prejudice as the result of an enlargement of time for the New Defendants. As stated above, if the Court were to deny the New Defendants' motions to dismiss, the New Defendants would nevertheless have sufficient time to comply with subsequent discovery deadlines set forth in the Case Management Order. Thus, there would be no prejudice to any other party to this action and the trial could proceed as currently scheduled.

For all of the foregoing reasons, the New Defendants respectfully request an additional amount of time to identify their fact witnesses until after the Court decides the soon-to-be-filed motions to dismiss, as well as of any other immediate deadlines in the Court's Case Management Order. In the alternative, and consistent with the relief requested, the New Defendants would identify by cross-reference any fact witnesses disclosed by Plaintiffs or Blitz U.S.A., Inc. and reserve the right to supplement their responses.

Respectfully submitted,

/s/ Wendy M. Warren

Wallace W. Dietz (TN BPR No. 009949)

wdietz@bassberry.com

Wendy M. Warren (TN BPR No. 021880)

wwarren@bassberry.com

**BASS, BERRY & SIMS, PLC**

150 Third Avenue South, Suite 2800

Nashville, TN 37201

Telephone: (615) 742-6200

Facsimile: (615) 742-0417

Timothy P. Harkness (pro hac vice)  
timothy.harkness@freshfields.com  
Pamila Gudkov (pro hac vice)  
mila.gudkov@freshfields.com  
**FRESHFIELDS BRUCKHAUS DERINGER US LLP**  
601 Lexington Avenue  
New York, NY 10022  
Telephone: (212) 277-4000  
Facsimile: (212) 277-4001

*Attorneys for Defendant Kinderhook Capital Fund  
II, L.P.*

/s/ John R. Tarpley / WMW with permission  
John R. Tarpley (TN BPR No. 9661)  
jtarpley@lewisking.com  
David A. Chagas (TN BPR No. 20679)  
dchagas@lewisking.com  
**Lewis, King, Krieg & Waldrop, P.C.**  
424 Church Street, Suite 2500  
Post Office Box 198615  
Nashville, TN 37219  
Telephone: (615) 259-1366  
Facsimile: (615) 259-1389

Mark C. Hegarty (pro hac vice)  
mhegarty@shb.com  
Douglas S. Beck (pro hac vice)  
dbeck@shb.com  
Adrienne Hernandez (pro hac vice)  
ahernandez@shb.com  
**SHOOK, HARDY & BACON, L.L.P**  
2555 Grand Blvd.  
Kansas City, MO 64108-2613  
Telephone: (816) 474-6550  
Facsimile: (816) 421-5542

*Attorneys for Defendants Blitz, U.S.A., Inc.; LAM  
2011 Holdings, LLC f/k/a Blitz Holdings, LLC;  
Blitz Acquisition Holdings, Inc.; Blitz Acquisition,  
LLC; and Blitz RE Holdings, LLC*

**CERTIFICATE OF SERVICE**

I do hereby certify I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system on this 28th day of October, 2011, which will send a notice of electronic filing to the following:

David Jones, Esq.  
Logan & Lowry, LLP  
102 East 3rd Street  
Grove, OK 74345-2469

Hank Anderson, Esq.  
Anderson Law Firm  
4245 Kemp Blvd.  
Suite 810  
Wichita Falls, TX 76308

Daniel L. Clayton, Esq.  
Randall L. Kinnard, Esq.  
Kinnard, Clayton & Beveridge  
127 Woodmont Boulevard  
Nashville, TN 37201

/s/ Wendy M. Warren  
Wendy M. Warren